

**IN THE ODISHA STATE FOOD COMMISSION,
BHUBANESWAR**

PRESENT:

Sri Ranglal Jamuda, Chairperson
Sri Manoj Kumar Panda, Member
Dr. Sipra Mallick, Member

Case No. 1/FC(S) 2016-11-19

Date of Judgement – 21.11.2016

Petitioner: Member Secretary of Odisha State Food Commission.

Versus

Respondents:

1. Smt. R.Chopra, IAS, Commissioner-cum-Secretary, S & ME Department.
2. Sri Niranjan Sahoo, IAS, Collector, Khordha
3. Sri Gangadhar Sahoo, State Nodal Officer, MDM Programme
4. Sri Brundaban Satpathy, District Education Officer, Khordha
5. Sri Maheswar Sahoo, Block Education Officer, Tangi
6. Sri Purna Chandra Mishra, CRCC, Tangi
7. Smt. Soubhagini Devi, Head Mistress, Pandabpatna Primary School.
8. Smt. Manjulata Dei, Asst. Teacher, Pandabpatna Primary School.
9. Sri Bijan Ku. Kandi, President, School Management Committee, Pandabpatna Primary School.
10. Sri Raj Kishore Satpathy, Transport Agent.
11. Sri Niranjan Mishra, Additional Block Education Officer, Tangi.

JUDGEMENT

1. The Odisha State Food Commission (hereinafter referred to as "O.S.F.C. or Commission" in short) have invoked their jurisdiction under Sub-Section-6(b) of Section 16 of National Food Security Act, 2013 for alleged commission of negligence, laxity and lapse by the Respondents in the matter of Mid-Day-Meal(MDM) Programme at Pandabpatna Primary School resulting in its total disruption and discontinuance.
2. Therefore, the sole point for determination in this case is whether the Respondents have committed negligence, lapse and laxity leading to total disruption and discontinuance of Mid-Day-Meal in Pandabpatna Primary School from 9.8.2016 to 25.8.2016. Importantly, it is first felt imperative to refer to the letter addressed by Respondent No. 1 Commissioner-cum-Secretary, School & Mass Education to the Chairman of the Commission contained in Ext 2 where it has been written that the Collector, Khurda Respondent No 2 has submitted a report admitting disruption of MDM due to lack of diligence on the part of the Transport Agent and has directed the DEO to transport MDM rice through the departmental arrangement and the Collector, Khurda was asked to take strict action against the erring officials and agencies to avoid recurrence of lapses in future. It is the admitted position that there was total disruption of MDM rice in the Pandabpatna Primary School. It, therefore, follows as a natural corollary that fixation of responsibility and liability is pivotal. It is interesting to note in this connection that, Respondent No. 1 in the counter contained in Ext B has taken the stand that in the State of Odisha MDM is managed by School Management Committee (SMC) in a decentralised mode and the SMC has been given the power to procure MDM ingredients, operate MDM account, engage and disengage cook-cum-Helper. She has pleaded in the counter that, in order to avoid disruption in MDM, the SMC with Head Mistress as Secretary has been authorised to divert and spend any fund in the

school account including the SSA fund and replenish it on receipt of MDM allotment. Her further plea in the averment is that the DEOs have been instructed to keep buffer stock of MDM rice and cooking cost for 2 months in advance at the school point during which planning could be made for further release or adjustment of the funds and foodgrains lying unspent or unutilised. Respondent No. 1 has specifically alleged in her counter that non-adherence to the above instructions by the DEO, BEO and SMC including Head Master resulted in this type of contingencies. On her own showing in the counter, State Project Management Unit has been set up in the department to look after management of MDM programme under her supervision and guidance. It is significant to note that even if admittedly the MDM Programme is run under her supervision and guidance there has been abysmal failure on the part of Respondent No. 1 to supervise and guide the MDM Programme. Undoubtedly the scheme and arrangements for implementation of MDM Programme made by the Government are highly commendable and laudable. But allegedly there has been total lack of sincerity and diligence on the part of Respondents for execution and implementation of the above scheme of the Government.

3. It is as much inconceivable as unusual that although Respondent No. 1 had instructed the Collector, Khordha Respondent No. 2 to take strict action against the erring officials, the latter in total disregard of the order of the former sought a report from the DEO, but the matter was finally enquired into by the BEO and report was submitted. Fact remains that the entire materials on record are conspicuous by the absence of even a single letter addressed by the Respondent No.1 to the Collector, Khordha Respondent No. 2 to take strict action against the erring officers and the Transport Agent. It is not only a matter of serious concern but also deep regret that Respondent No. 1 stated before the Commission that she was not sure on this point but would report to the Commission by 7.11.2016. But no such report did ever reach the Commission. What cannot be lost sight of in this connection is that the statement of Respondent No. 1 suffers from serious

contradiction. Whereas she has first stated that she has not initiated any action against the Collector, Khordha Respondent No. 1, subsequently she has stated that she was not sure in this regard. Undeniably, this is a glaring contradiction which goes a long way in straining the essential credibility of Respondent No. 1. Be that as it may, fact remains that no letter has been addressed by Respondent No. 1 to the Collector, Khordha Respondent No. 2 to take action against the erring officials. It is the candid admission in the averment of Respondent No 1 in her counter that one State Project Management Unit has been set up under her supervision and guidance to look after the management of MDM. The very fact that there is absolutely no averment in the counter of Respondent No. 1 about any action against any officer in the matter of MDM Programme leads to the inescapable conclusion that the letter contained in Ext 2 is nothing more than mere nebulous and amorphous instruction. It is unusual that Respondent No. 1 instead of using the word "negligence" has written "lack of diligence" which is quite understandably not consistent with the gravity and seriousness of the whole matter. Respondent No. 1 has categorically stated before the Commission: " I have not found out whether the Collector, Khordha took any action as per my instruction". This statement of non other than the Commissioner-cum-Secretary of School & Mass Education herself shows in no uncertain terms that she possibly in her own wisdom chose not to take any follow up action. Respondent No. 1 in her statement before the Commission Ext-J has also asserted that she has not initiated any action against the Collector nor has she informed the Secretary, GA Department who is the competent authority to initiate disciplinary action against the Collector, Khordha. Her further statement is that she is not sure whether any letter had been addressed by her to the Collector, Khordha to take strict action against the erring officials or the Transport Agent. No less specific is her statement that her priority then was to restore MDM programme which she has already done and now she could think of fixing responsibility on the erring persons. Fact remains that, she has not yet

fixed any responsibility on any of the Respondents. The very fact that, Respondent No. 1 did not apprise the Secretary, GA Department of this grave and serious matter unmistakably shows her total apathy and callousness. However, her claim in the statement that she shall ensure restoration of MDM Programme cannot be wished away as a sheer of platitude although the Commission is not so much concerned about restoration of MDM in the School subsequently as with disruption of MDM from 9.8.2016 to 25.8.2016 in Pandabpatna Primary School.

4. Quite a discernible feature writ large in the whole case is that each Respondent has shifted the responsibility on the other. It is the categorical averment of Respondent No. 1 in the counter that non-adherence to the instructions by the DEO, BEO and School Management Committee including the Head Mistress virtually resulted in disruption of MDM in Pandabpatna Primary School. The DEO Respondent No. 4 while totally disowning his responsibility has averred in the counter that BEO, Tangi was asked to take immediate steps to supply MDM rice and the main reason of disruption of MDM was non-supply of MDM rice by the Transport Agent. He is emphatic in his averment that Asst. Teacher, CRCC of Cluster and the ABEO have been warned for their negligence. DEO Respondent No.4 in his statement before the Commission has fairly admitted that he had absolutely taken no steps for ensuring MDM rice in Pandabpatna Primary School. He has, in fact, admitted his lapse and negligence and has assured that such laxity or lapse will never recur in future. On the face of his candid admission of negligence and lapse in the statement before the Commission, his averment in the counter shifting the responsibility is an exercise in futility to escape liability and responsibility. The Transport Agent Respondent No. 10 in his statement Ext-T before the Commission has sought to explain that he did not know that stock of rice had exhausted in Pandabpatna Primary School for which he could not supply. He has candidly admitted that he had received the instruction to supply rice on 8.8.2016 but supplied on 24.8.2016. His further statement is that nobody had told him about

the problem in Pandabpatna Primary School and that he has neglected in his duty. This serious contradiction in the statement of Respondent No. 10 tells his own tale quite unequivocally. Respondent No. 11 ABEO(MDM) in his statement Ext 2/3 has flatly denied his knowledge of such problem. Head Mistress Respondent No. 7 has stated before the Commission that she had proceeded on E.L. w.e.f. 8.8.2016 and not on 9.8.2016 as reported by the higher authority.

5. In the conspicuous absence of any documentary evidence the averment of Raj Kishore Satpathy, Transport Agent Respondent No. 10 that he received delivery order of rice from the District Education Officer, Khordha on 6.8.2016 and received the Release Order from FCI on 8.8.2016 is wholly unsustainable. Even assuming that Respondent No. 10 had received the delivery order of rice from the DEO, Khordha on 6.8.2016 and the release order from FCI on 8.8.2016, fact remains that he had failed to supply MDM rice to Pandabpatna Primary School on 9.8.2016. His statement before the Commission that he supplied MDM rice to Pandabpatna Primary School on 24.8.2016 is a definite pointer to the conclusion that he committed gross negligence, lapse and laxity in the matter of supply of MDM rice to Pandabpatna Primary School from 9.8.2016 to 25.8.2016 and thus he has committed breach of the terms and conditions of the agreement entered into between him and the competent authority for supply of MDM rice eventually leading to students' deprivation of food. His further statement that nobody had told him about this problem in Pandabpatna Primary School and that he has not neglected his duty can be well brushed aside as inconsequential and figment of imagination. The glaring contradiction between the statement of Respondent No. 10 before the Commission and his averment in the counter tells his own tale quite unequivocally. In effect, the prevaricating statement in the averment of the Transport Agent Respondent No. 10 unambiguously shows his negligence, lapse and laxity. Not only that, he has also admitted his negligence. It is common legal proposition that facts admitted need not be proved.

6. The Head Mistress of Pandabpatna Primary School Respondent No. 7 had stated before the Commission that she had proceeded on E.L w.e.f. 8.8.2016 and not on 9.8.2016 as reported by higher authority. She has also stated that she had not given any instruction to the Assistant Teacher who had remained in her charge as Head Mistress. Respondent No. 7 Head Mistress of the School has categorically asserted in her statement Ext-Q that she could not prevent the situation as she had proceeded on E.L. to Bangalore to attend on her pregnant daughter. It was reasonably expected that the Head Mistress before proceeding on E.L should have ensured uninterrupted supply of MDM rice to the School. It is the clean statement of respondent No. 6 Cluster Resource Centre Coordinator that he has not reported in writing about the problem although he came to know this on 6.8.2016. Respondent No. 6 Cluster Resource Centre Coordinator in the statement Ext-P has pleaded that stock of rice in the school had exhausted and it was also not possible on his part to borrow rice from other schools where the stock was also low and insufficient. BEO Respondent No. 5 has candidly admitted in his statement Ext-N that he is partly responsible for the negligence. However, he has been at least honest enough to admit his part of negligence. Respondent No. 4 DEO has fairly conceded that in his capacity as DEO he had absolutely taken no step for ensuring supply of MDM rice to the School. Quite evidently Respondent No. 4 to Respondent No. 7 are squarely responsible for disruption of MDM Programme in the Pandabpatna Primary School.

7. The Collector, Respondent No. 2 in his statement Ext-K has sought to explain away the whole issue asserting that he could not personally enquire into the matter because of heavy work load despite the fact that Respondent No. 1 had specifically instructed him to do so. His further statement before the Commission is that the whole matter was not brought to his notice earlier. Respondent BEO in his statement has explained that the rice distribution agent supplied the rice on 25.8.2016 instead of before 10.8.2016 thus causing delay by 15 days. The Collector, Respondent No.2 at para-4 of his counter has

specifically stated: "There was no written communication from the Government to the undersigned to enquire into the News Item published in Odia Daily personally". This plea of Collector, Khurda Respondent No. 2 stands squarely falsified by the documentary evidence i.e. letter No. 943-SPMU dt. 26.8.2016 contained in Ext-C addressed by respondent No. 3 State Nodal officer(MDM) to the Collector. The relevant letter clearly reads: " You are therefore requested to enquire into the matter and furnish a factual report in this regard by 27.08.2016 for kind appraisal of Commissioner-cum-Secretary, S & ME Department and State Food Commission, Odisha". Quite obviously, the explanation offered by the Respondent No. 2 in this connection is far removed from truth. Collector Respondent No. 2 in his counter has stated that the DEO, Khordha is the Nodal Officer of the District under MDM Programme and the said programme is being implemented through the BEOs and regular check-up has been undertaken by the DEOs and then by BEOs at regular interval. His further averment is that during his normal tour to different areas he also checks the functioning of MDM Programme and holds periodical review regarding proper functioning of MDM Programme which is also conducted in District level. This respondent in his counter has pleaded that dislocation in MDM Programme in Pandabpatna Primary School was not brought to his notice and when it came to his notice he had instructed the DEO, Khordha vide office letter No. 1785 dt. 23.8.2016 to enquire into the matter and furnish a detailed report. It is also his averment that he had instructed the DEO to ensure restoration of programme immediately. His explanation in the counter is that had the matter come to his notice earlier he could have intervened immediately. He has also averred that DEO, Khordha caused an enquiry through the BEO timely and submitted report. His further averment is that the DEO, Khordha basing on the enquiry report of the BEO, Tangi submitted a report with detailed facts and the said enquiry report has been transmitted to the State Nodal Officer(MDM) vide office letter No. 1809 dt. 29.8.2016. His averment reveals that one Sri Raj Kishore Satpathy, Transporting Agent who was selected

for the year 2014-15 for lifting and transporting MDM rice for Tangi Block, Jatni Block and BMC area neglected to supply MDM rice to Pandabpatna Primary School in time for which the MDM Programme was adversely affected in the said school for the period from 9th August to 25th August 2016. It has been also averred that as Sri Satpathy violated the terms and conditions of agreement for transportation of MDM rice, his authorisation for transportation of MDM rice has been cancelled vide order No. 1603 dt. 16.9.2016. It is as much disconcerting as unusual that despite the specific instruction by Respondent No. 1 Commissioner-cum-Secretary to Government, School & Mass Education Department for taking strict action against the erring officers and the Transport Agent, Collector, Khordha Respondent No. 2 deliberately did not take any action against any officer or any Transport Agent but conveniently chose to shift the entire responsibility of enquiry on the DEO, Tangi which seriously militates against the purpose, purport, spirit and meaning of the letter addressed by the Commissioner-cum-Secretary to Government, School & Mass Education Department. The explanation in this connection offered by Respondent No 2 before the Commission that he could not conduct enquiry personally because of heavy work load is not only wholly unacceptable but also untenable in view of the gravity and seriousness of the problem in the Pandabpatna Primary School. It is more than apparent that, the respondent No. 2 far from addressing this problem immediately as Collector, Khordha shifted the entire responsibility. This conduct of the Respondent No. 2 smacks of total apathy and indifference.

8. The Respondent No. 3 State Nodal Officer(MDM) in his counter has stated that he came to know about the disruption of Mid-Day-Meal from daily Odia News Paper "The Sambad". His averment in the counter is that on the same day DEO was contacted and instructed to look into the matter and appraise the factual position. His further averment is that when the DEO did not submit any report, the Collector, Khordha was requested to conduct an enquiry vide office letter No. 943/SPMU dt. 26.8.2016 contained in Ext-C and furnish a

factual report for Respondent No. 1. His averment reveals that DEO vide letter No. 1337 dt. 26.8.2016 contained in Ext-4 submitted an enquiry report of BEO for information and necessary action. It is the consistent averment of all the Respondents that MDM rice has been supplied to the school on 25.8.2016 and the scheme is running smoothly in the school. This is hardly of any consequence in view of the admitted position that there was disruption and discontinuance of MDM rice in the Pandabpatna Primary School from 9.8.2016 to 25.8.2016.

9. It is the averment of State Nodal Officer(MDM) Respondent No. 3 that MDM is managed in a decentralised mode in the State of Odisha through the School Management Committee (SMC) and funds are placed with the DEOs who in turn release the same to the schools as per the need taking the balance into account. His further averment is that the School Management Committee with the Head Master as the Secretary is competent to procure MDM ingredients from the local market, Fair Price Shops and run MDM in the school. His averment further reveals that the MDM account is operated jointly by the Head Master and the President of School Management Committee. No less specific is the averment of State Nodal Officer (MDM) that in order to avoid disruption in MDM, DEOs have been instructed to keep two months cooking cost and foodgrains at the school level in advance. It is also his averment that, for avoiding disruption of MDM, Head Masters are authorised to divert and spend funds available under any other schemes like, ASS fund (School improvement grant, repair and maintenance grant, building construction grant etc) and replenish the same subsequently on receipt of MDM allotment. This Respondent in his averment has specifically alleged that the above instructions were not followed by the field functionaries which resulted in MDM disruption. He has also submitted in his averment that no field level authorities informed about shortage of rice, non-cooperation of transport agent etc to the State Project Management Unit(MDM). It also appears from his averment that as per the office letter No. 1712 dt. 4.11.2015 CRCC is supposed to inspect 10 schools in a month, BEO

10 schools in a month and DEO 5 schools in a month and monthly review meetings at BEO level and DEO level are to be held. Respondent No. 3 has explained that, this situation could have been avoided or overcome by the BEO and DEO, had the issue been discussed in the meeting. He has also averred that there is an existing system of Management Information System called MIS, the data of which the Head Masters fill up, the CRCC collects and gives to BEO and that is fed to the MIS portal the next month. His candid admission is that this MIS does not help monitoring MDM on a real time basis. There could be no gainsaying the fact that, the averment as well as the admission of State Nodal Officer(MDM) no way sustain the stand taken by him. This Respondent and Respondent No. 1 cannot be absolved of their responsibility and liability merely because of the assertion that MDM is managed in a decentralised mode in the State of Odisha through the School Management Committee. It is important to note that, the State Nodal Officer(MDM), State Project Management Unit has fairly admitted in his statement Ext-L before the Commission that, in his capacity as State Nodal Office in the State Project Management Unit, it is his duty and responsibility to look into the day to day implementation of the program to ensure effective monitoring and supervision of uninterrupted supply of Mid-Day-Meal to the school children. His statement that management of MDM has been decentralised and the District Administration did not report to him and he came to know about the disruption of MDM only through Media is absolutely of no consequence in view of his above clean admission. All the more important is the fact that, the allegations against the Respondents have not been discredited in any manner. More significantly, shifting of responsibility by each respondent on the other unmistakably shows their apathetic, indifferent and callous attitude. The mainstay of Respondent No.1 & Respondent No. 2 in their averment that since MDM Programme is managed in a decentralised mode in the State of Odisha through the School Management Committee they cannot be saddled with any responsibility or liability is squarely rejected for the simple and obvious reason that it is not only

factually misconceived but also administratively untenable. In essence, their contentions in this regard hardly carry any conviction. It is manifestly obvious from the averment of the counters, the statement of the respondents before the Commission, documents and materials on record that all the respondents have committed gross negligence, lapse and laxity which eventually resulted in disruption of MDM in Pandabpatna Primary School from 9.8.2016 to 25.8.2016. The allegations against the Respondents stand convincingly, clinchingly and unerringly established to the hilt by ample materials on record. The Respondents, on the other hand, have utterly failed to discredit the materials and evidence on record against them. The contentions of the respondents being too tenuous to be tenable are wholly devoid of merit. Explicitly as well as implicitly the entire materials against the Respondents which suffer from no inherent infirmity or improbability, have virtually remained unimpeached and unblemished.

11. On the face of the facts and circumstances discussed above and in ultimate analysis of the totality of materials on records we are driven to hold that the respondents have committed negligence, laxity and lapse in the matter of Mid-Day-Meal (MDM) at Pandabpatna Primary School resulting in its total disruption and discontinuance. We find no mitigating factor or extenuating circumstances in favour of the respondents. Resultantly each of the respondents is directed to pay a fine of Rs.5,000/- (Rupees five thousand) only as penalty by 21.12.2016.

Sd/-

Dr. Sipra Mallick
Member

Sd/-

Sri Ranglal Jamuda
Chairperson

Sd/-

Sri Manoj Kumar Panda
Member

Dictated and corrected and pronounced today i.e. 21st November 2016.

Sd/-

Dr. Sipra Mallick
Member

Sd/-

Sri Ranglal Jamuda
Chairperson

Sd/-

Sri Manoj Kumar Panda
Member

LIST OF DOCUMENTS ADMITTED FOR THE PETITIONER

1. Ext-1 Paper clipping of the daily news paper "The Sambad" dt. 23.8.2016
2. Ext-2 Compliance Report of the Commissioner-cum-Secretary, S & ME Department on the news item published in Odia daily newspaper "The Sambad" dt. 23.8.2016.
3. Ext-3 Inquiry Report of the BEO, Tangi submitted by the Collector, Khordha to the S.N.O.(MDM).
4. Ext-4 Inquiry Report of the Block Education Officer, Tangi, Dist- Khordha sent by the DEO, Khordha.
5. Ext-5 Inquiry Report of the CRCC, Tangi submitted to the B.E.O., Tangi.

LIST OF DOCUMENTS (EXHIBITS) ADMITTED FOR THE

RESPONDENTS:

1. Ext-A Counter of Smt. Ranjana Chopra, IAS, Commissioner-cum-Secretary, S & ME Department.
2. Ext-B Letter of State Nodal Officer(MDM) to the Collector regarding paper clipping on MDM Programme.
3. Ext-C Submission of report in case No. 01/SFC(S)/2016 by the Collector, Khordha.
4. Ext-D Counter of Collector, Khordha.
5. Ext-E Action Taken Report of Collector, Khordha to the SNO, MDM
6. Ext-F Report of DEO to the Collector, Khordha
7. Ext-G Counter of SNO(MDM)
8. Ext-H Counter filed by the DEO, Khordha
9. Ext-Z Counter filed by the BEO, Tangi
10. Ext-Y Counter filed by the CRCC, Tangi
11. Ext-X Counter filed by the Headmistress, Pandabpatna Primary School, Tangi
12. Ext-W Counter filed by the Assistant Teacher, Pandabpatna Primary School, Tangi
13. Ext-V Counter filed by the President, SMC, Pandabpatna Primary School, Tangi
14. Ext-U Counter filed by Sri Rajkishore Satapathy, Transport Agent.

15. Ext-Z/1 Counter filed by Sri Niranjan Mishra, Additional Block Education Officer, Tangi
16. Ext-Z/2 Statement of Smt. Ranjana Chopra, IAS, Commissioner-cum-Secretary, S & ME Department.
17. Ext-J Statement of Sri Niranjan Sahoo, Collector, Khordha before the Commission.
18. Ext-K Statement of Sri Gangadhar Sahoo, SNO(MDM) before the Commission.
19. Ext-L Statement of Sri Brundaban Satapathy, DEO, Khordha before the Commission.
20. Ext-M Statement of Sri Maheswar Sahoo, BEO, Tangi before the Commission.
21. Ext-N Statement of Sri Purna Chandra Mishra, CRCC, Tangi before the Commission.
22. Ext-P Statement of Smt. Soubhagini Devi, Headmistress, Pandapatna Primary School, Tangi before the Commission.
23. Ext-Q Statement of Smt. Manjulata Dei, Assistant Teacher, Pandabpatna Primary School, Tangi before the Commission.
24. Ext-R Statement of Sri Bijay Kumar Kandi, President, SMC, Pandabpatna Primary School, Tangi before the Commission.
25. Ext-S Statement of Sri Rajakishore Satapathy, Transport Agent before the Commission.
26. Ext-T Statement of Sri Niranjan Mishra, Additional Block Development Officer(MDM), Tangi before the Commission.

Sd/-
Dr. Sipra Mallick
Member

Sd/-
Sri Ranglal Jamuda
Chairperson

Sd/-
Sri Manoj Kumar Panda
Member